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State Representative • 3rd Assembly District

Assembly Bill 228
Cooperative Securities Law Modification
Assembly Committee on Financial Institutions
September 14, 2011

Thank you for the opportunity to testify on behalf of Assembly Bill 228 (AB 228), which would reinstate a long-standing registration exemption for cooperatives offering or selling securities.

Prior to January 1, 2009, any securities of a cooperative organized under Chapters 185 or 193 were exempt from Department of Financial Institutions (DFI) registration requirements related to offering or selling securities. A “security” includes stocks, notes, bonds, investment contracts, limited partnership interests, and certain other financial interests.

In 2008, a bill was introduced at the request of DFI to update the Wisconsin Uniform Securities Law based on changes made by the federal Uniform Securities Act of 2002. Under the provisions of the bill, which became law as 2007 Wisconsin Act 196, the cooperative exemption was significantly narrowed and became considerably more restrictive. This stands in stark contrast to the broad and inclusive nature of the previous well-functioning exemption.

At the time, cooperative stakeholders were unaware of the exemption changes contained in the legislation. Now, however, cooperative development professionals – who work with individuals who desire to create cooperatives – are witnessing significant problems associated with the more restrictive exemption.

The formation of new cooperatives often requires the offering of preferred stock to individuals willing to assist with the financing of the cooperative's start-up. The current restrictive exemption has undercut opportunities to create cooperative businesses that can add value to goods, provide desirable services, and strengthen communities across Wisconsin. It has resulted in confusion, delays, and legal costs that previously were avoided when individuals joined together to start cooperatives.

AB 228 restores a broad registration exemption for cooperatives similar to what previously existed prior to the implementation of 2007 Act 196. The prior exemption was functional, useful, and critical to establishing and operating Wisconsin cooperative businesses, which, in turn, created Wisconsin jobs.

This bill will restore vitality to cooperative development efforts in Wisconsin. AB 228 is backed by Cooperative Network, and is welcomed by cooperative development professionals and those individuals across Wisconsin who want to organize cooperatives for the good of their communities and local economies.

September 14, 2011

To: Members, Assembly Committee on Financial Institutions

From: John Manske, Director of Government Relations

Re: Support for Assembly Bill 228, relating to Exemptions from Securities
Registration Requirements

Cooperative Network represents 600 cooperative businesses including mutual insurance companies, health care purchasing plan cooperatives, and credit unions owned by approximately 2.9 million Wisconsin members. Thank you Chairman Kramer for the hearing today and thank you Representative Al Ott for your leadership on this bill. We ask for the committee's support of Assembly Bill 228, which would restore a previous exemption for cooperative businesses from having to file with the Department of Financial Institutions (DFI) if they are going to issue securities such as preferred stock.

Cooperative businesses are a vital and important part of Wisconsin's economy in part because cooperative profits are returned locally to member/owners. In fact, Wisconsin is proud to be the second leading cooperative business state in the nation.

This type of broad cooperative exemption existed in the statutes prior to January 1, 2009, but was inadvertently eliminated during enactment of a Uniform Securities Law. The limiting and confusing language that replaced the previous broad exemption has created a "chilling effect" on coop organizing efforts, according to coop development professionals. Among the examples brought to our attention are difficulties with the current law cited by New Leaf Market, a food cooperative venture in Green Bay, Fifth Seasons Cooperative, a food system cooperative headquartered in Westby, and efforts to organize a Community Solar Cooperative in Dane County and surrounding areas.

It is our understanding that during this law revision there was no discussion either for or against this provision by cooperative business or Department of Financial Institution staff. In fact, during recent conversations with DFI senior management, Cooperative Network was assured that there are no objections in the department to returning the law to what it was prior to 2009. The previous exemption did not result in any problems.

Restoring this exemption will enable new and existing cooperative businesses to access capital that is often the difference between success and failure without the significant legal expense needed to register their security with DFI.

Thank you for considering our request for support of this important legislation.

Assembly Bill 228
Statement of Scott Herrick

September 14, 2011

I strongly support this legislation.

My law firm is active in organizing and representing cooperatives around the state. We regard this legislation as an essential "fix" to an inadvertent affect of the recent blanket re-write of Wisconsin securities law. In our view, Assembly Bill 228 is in substance a "trailer bill" which restores the legal and regulatory treatment of Wisconsin cooperatives to the simple, long-standing, and uncontroversial pattern in place for many years prior to 2007 Wisconsin Act 196, which adopted a "uniform" securities code.

I would be pleased to communicate more fully and at length regarding the substance of this legislation, and I am prepared to advocate aggressively for it on substantive policy grounds, but I reserve that argument at this time, primarily because no argument has been advanced against the concept of the AB 228. I note only that AB 228 does no special favors for cooperatives, but merely restores to them the legal position they held for decades without complaint or incident. The "uniform" act of 2007 did not quite fit our Wisconsin cooperative law, experience, and practice. The change wrought was an unintentional mistake, not a decision, and AB 228 is a correction, not a new policy.

I also observe that AB 228 is surely as straightforward and non-partisan a bill as can be conceived; who doesn't like cooperatives? I urge your support.

I regret that a scheduling commitment may prevent me from offering this statement in person and I appreciate the opportunity to submit it in writing.

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April 19, 2011

Memo: Coop Securities Law Project: Seeking the *status quo ante*
From Scott Herrick

Chapter 551 of the Wisconsin Statutes was repealed and recreated in its entirety effective January 1, 2009, by 2007 Wisconsin Act 196, the "Wisconsin Uniform Securities Law," which had the general purpose of conforming Wisconsin securities law and regulation to a uniform national model.

Prior to that revision Wisconsin law for many years included the following provision, at WS 551.22, "Exempt securities:"

The following securities are exempt from registration under s. 551.21(1):

(12) Any securities of a cooperative corporation organized under ch. 185 or 193.

That "safe harbor" exemption disappeared under the Wisconsin Uniform Securities Law, replaced by a complex exemption requiring considerable legal and administrative discretion and judgment. The text of the surviving exemption reads:

(8) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative.

The simple exemption was extremely functional, useful, and valuable in establishing and operating Wisconsin cooperative enterprises. The loss of the exemption has been a hardship especially for new cooperative enterprises, and has created expensive legal challenges in attempting to comply with the new law, which simply does not anticipate or address the cooperative model.

The exemption from state registration, which was not an exemption from anti-fraud standards and not an exemption from federal securities regulation, had served Wisconsin well and was not controversial. I believe that no advocate of the 2007 revision intended effectively to remove the coop exemption; on the contrary, I doubt that any advocate was aware of it. I believe that Wisconsin regulators did not intend or anticipate the loss of the exemption, and have had some difficulty adjusting to it. I believe that the exemption disappeared because the model act did not contain a similar provision, which in turn probably reflects the fact that many states do not share the Wisconsin cooperative tradition; in fact, many states do not have a separate cooperative statute.

I am prepared to advocate aggressively for the original safe-harbor exemption on substantive policy grounds, based on our experience over many years in organizing and representing Wisconsin cooperatives, but I reserve that argument at this time, primarily because no argument has been advanced against the exemption. The loss of the exemption was a mistake, not a decision.

Perhaps other adjustments to the Uniform Act are under consideration. Whether or not a "trailer bill" is being developed, I propose that the Wisconsin Uniform Securities Law be amended to restore the old exemption, replacing the "uniform act" text at WS 551.201 (8), which would now read: *(8) Any securities of a cooperative corporation organized under ch. 185 or 193.*

SH/hs



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September 14, 2011

To: Members, Assembly Committee on Financial Institutions

From: Anne Reynolds, Assistant Director, University of Wisconsin Center for Cooperatives

Re: Assembly Bill 228, relating to Exemptions from Securities Registration Requirements

The University of Wisconsin Center for Cooperatives is a multi-disciplinary center that combines the resources of University of Wisconsin-Madison and the University of Wisconsin Extension. We seek to increase understanding about cooperatives through our teaching, research and information-sharing programs.

We provide resources to groups who are interested in starting a cooperative business, including referrals to individuals who provide business planning and legal assistance. We receive weekly contacts from people who are considering a cooperative business or are managing existing cooperatives. Our programs reach people across the state, both rural and urban, in all sectors of the economy.

Like most businesses, start-up cooperatives need to raise funds for facilities and operations. They generally raise these funds from their members. For example, New Leaf Market is planning to raise capital from their members in the Green Bay area. New Leaf Market is a start-up grocery store. It's in the planning and fund-raising stages right now, with support from the City of Green Bay, the Green Bay Area Chamber of Commerce, Wisconsin Public Service, UW Extension and several area businesses.

They need to move forward soon with their capital drive, but are in the process of applying for an exemption. The uncertainty has made decision-making more complicated, and has slowed down their capital drive significantly. It has also added to their legal fees.

Although this is only one anecdote, it is representative of the difficulties faced by recent start-up cooperative ventures. I appreciate the opportunity to share this information with you, and would be glad to answer any further questions.

Solar Connections, LLC
3509 Lucia Crest
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September 14, 2011

To: Members, Assembly Committee on Financial Institutions

From: Kurt Reinhold, Renewable Energy Advocate and Ecopreneur

Re: Assembly Bill 228, Relating to the restoration of exempt status for cooperatives from expensive Securities registration requirements.

For three years, my company has investigated how to create a community solar business that would allow individuals who cannot for one reason or another put solar on their own property to take part in a group venture that would improve both the access and the cost of solar for its customers. One of the biggest barriers that exists has been complying with or seeking exemptions from state and federal securities laws.

Raising money to construct one project is possible through donations and fundraising efforts; but, the point of the business plan is to find a model which can be replicated all over the state of Wisconsin, and can give members some of the same benefits of owning solar on their own. The biggest benefit from owning solar on your own property is that you reduce your electric bill by displacing dirty electricity with clean solar power. When you are not using all of the solar from your system, you are allowed to get credit for the electricity that you share onto the grid. In effect, you get credit on your utility bill for the total amount of electricity your system produces. When the price of electricity goes up, your return on investment goes up. This is one of the benefits we would like to extend to others who would otherwise qualify for solar energy benefits, but have too much shading or cannot afford the entry price-point up front for solar.

The market for a "Solar Cooperative" should be considerable. Surveys show that over 90% of the public agrees that we should have more solar energy in our nation's energy mix. Unfortunately, less than 50% of those who express interest are able to fit solar onto their roof or into their backyards due to shading or poor south-facing exposure. Many cite the high up-front cost as the reason they don't "go solar". A community "Solar Cooperative" would allow individuals to spend one or two thousand dollars (or more) to take part in a project that is installed on a library or a church in their community, and to receive a monthly or annual return of capital or interest from the revenue generated from that electricity. This would be "virtual net-metering" because you would receive a credit through a pooled investment instead of on your own utility bill.

Restoring the exempt status to raising equity through cooperatives would allow a community solar business to avoid what would otherwise be too costly a barrier in order to start this sort of business enterprise. We would not be looking to raise hundreds of thousands of dollars per investor. We are looking to allow individuals to pool one, two, or perhaps ten thousand dollars at a time that they would have spent on their own property, but are pooling together to invest in the betterment of their community and to take advantage of a virtual net-metering of the solar electricity as a hedge against rising energy costs.